## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN ANN ARBOR

<b>THOMAS E. PEREZ,</b> Secretary of Labor,	)	
United States Department of Labor,	)	
Plaintiff,	)	
V.	)	Civil Action No.:
	)	2:15-cv-14310-GCS-EAS
MIN & KIM INC., d/b/a	)	
SEOUL GARDEN OF ANN ARBOR,	)	
a Michigan corporation,	)	Hon. George Caram Steeh
KOUNWOO HUR, an individual,	)	District Judge
and <b>SUNG HEE KIM</b> , an individual	)	
	)	Hon. Elizabeth A. Stafford
Defendants.	)	Magistrate Judge

# SECRETARY OF LABOR'S MOTION TO STRIKE DEFENDANTS' AFFIRMATIVE DEFENSES 4, 5, & 6

The Secretary of the United States Department of Labor ("Secretary"), by his attorneys, and pursuant to Local Rule 7.1 and Federal Rule of Civil Procedure 12(f), moves to strike Defendants' Fourth, Fifth, and Sixth Affirmative Defenses asserted in their Answer. These defenses are either unavailable against the Secretary as a matter of law, are futile, or are boilerplate allegations that do not provide fair notice to the Secretary. The factual and legal bases for granting the Secretary's motion are set forth in the accompanying supporting brief. For the reasons stated therein, the Secretary prays that his motion to strike Defendants' Fourth, Fifth, and Sixth Affirmative Defenses is granted.

In accordance with Local Rule 7.1(a), on February 29, 2016, there was a conference between Defendants' attorney and the undersigned. The undersigned explained that the Secretary planned to file a motion to strike five affirmative defenses. Defendants' counsel requested an email outlining the issues, which was sent by the undersigned on February 29th, explaining the nature of the motion and its legal bases. On March 4, 2016, the Secretary received Defendants' response in which Defendants agreed to strike their Third and Seventh Affirmative Defenses. See "[Proposed] Agreed Order to Strike Defendants' Affirmative Defenses 3 & 7," filed concurrently herewith. The undersigned provided additional explanation with respect to the remaining affirmative defenses to Defendants' counsel via email on March 4. On March 7, 2016, the undersigned received Defendants' response, noting that Defendants still object to the motion to strike the remaining affirmative defenses. The parties also participated in a Rule 26(f) phone conference on March 7, and briefly discussed the remaining defenses. The Secretary has been unable to obtain concurrence and Defendants object to the motion to strike Defendants' Fourth, Fifth, and Sixth Affirmative Defenses.

**WHEREFORE**, the Secretary respectfully requests the Court strike Defendants' Fourth, Fifth, and Sixth Affirmative Defenses with prejudice.

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

#### CHRISTINE Z. HERI

Regional Solicitor

s/ Brooke E. Worden

#### **BROOKE E. WORDEN**

Trial Attorney

Office of the Solicitor U.S. Department of Labor 230 S. Dearborn St., Rm. 844 Chicago, IL 60604 Telephone: (312) 353-1218

Facsimile: (312) 353-1218

E-mail: Worden.Brooke.E@dol.gov

Bar Number 6299672 (IL)

Attorneys for Plaintiff, **Thomas E. Perez**, Secretary of Labor, United States Department of Labor

### BARBARA L. McQUADE

United States Attorney

#### PETER A. CAPLAN

Assistant U.S. Attorney 211 W. Fort Street, Ste. 2001 Detroit, MI 48226 (313) 226-9784 P-30643

Email: peter.caplan@usdoj.gov

#### **CERTIFICATE OF SERVICE**

I hereby certify that on March 7, 2016, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Cindy Rhodes Victor Kus Ryan PLLC 2851 High Meadow Circle, Suite 120 Auburn Hills, Michigan 48326

s/ Brooke E. Worden
BROOKE E. WORDEN
Trial Attorney

Office of the Solicitor U.S. Department of Labor 230 S. Dearborn St., Rm. 844 Chicago, IL 60604 Telephone: (312) 353-1218

Facsimile: (312) 353-5698

Email: Worden.Brooke.E@dol.gov

Bar Number: 6299672 (IL)